

Between late December 1985 and February 1986 Lauriski helped develop the waiver of liability form. The waiver was created due to the inability of Emery to maintain an adequate amount of insurance (Tr. 259). Utah Power and Light (UP&L) subsequently advised the press that it was taking over the operation of the mines because of the insurance question (Tr. 259, 260). The waiver policy has been continued by UP&L but the basic reason for the policy was negated by UP&L's insurance capability (Tr. 260). Lauriski indicated the older form was "very loose" (Tr. 240; Contestant Ex. 4). After receiving forms from various companies Lauriski began to develop Emery's new form based on the company's experience (Tr. 241). At that point he added on the form the hazard recognition or training checklist for all non-employee personnel. The draft form was approved by various individuals who reviewed it (Tr. 242). In early March 1986 a final form emerged (Tr. 243; Contestant Ex. 3, 5). An interoffice memorandum, dated March 21, 1986, identified those who would have to sign the waiver and those exempt from signing it (Tr. 245; Contestant Ex. 5). One of the criteria used to determine whether a person should be required to sign the waiver was the risk involved after the person entered the mine property (Tr. 246).

The first exemption involved state and federal agencies on mine property for reasons relating to coal production and/or inspections or enforcement actions. Even if any of these individuals were injured on mine property Emery believed it would not be held liable for such injuries (Tr. 246, 270, 282). An additional exemption focused on the employees of common carriers such as United Parcel and Uintah Freight. These individuals are exempt because of existing contracts holding Emery harmless in the event of injury to them. Further, Emery didn't think the risk was great enough for them to sign a waiver for each entry to the mine property (Tr. 247, 270, 283). In addition, the common carrier personnel do not go underground (Tr. 247, 283). A further exemption involved Lowdermilk Construction Company. This company does underground and surface work at the mine 100 percent of the time (Tr. 247). In addition, the Lowdermilk contract indemnifies and insures Emery (Tr. 248).

An additional exempted class consists of employees of Utah Power and Light. UP&L owns these particular coal mines and Emery serves as the operator (Tr. 248).

With the exception of the four described classes of persons, the waiver of liability policy applies to all other non-employees visitors to Emery's mines (Tr. 248).

The Emery people who developed the exemptions (Lauriski, Jensen, Cowan and Rajski) did not discuss the status of mine rescue teams entering the property. But such teams are exempt because a Utah state law holds coal operators harmless for miner rescue teams on their property (Tr. 250)